

STATE OF MICHIGAN
COURT OF APPEALS

CITY OF NOVI, CITY OF AUBURN HILLS,
VILLAGE OF BEVERLY HILLS, CITY OF
FARMINGTON, and CITY OF ORCHARD
LAKE VILLAGE,

Plaintiffs-Appellees,

v

DEPARTMENT OF ENVIRONMENTAL
QUALITY,

Defendant-Appellant.

UNPUBLISHED
October 14, 2010

No. 296405
Ingham Circuit Court
LC No. 09-001569-CZ

Before: SAWYER, P.J., and FITZGERALD and SAAD, JJ.

PER CURIAM.

Defendant appeals by leave granted, challenging the preliminary injunction issued by the circuit court that stayed the contested case proceedings involving National Pollution Discharge Elimination System (NPDES) general watershed and general jurisdictional permits for municipal separate storm sewer systems. We reverse. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Pursuant to the federal Clean Water Act, 33 USC 1251 *et seq.*, Michigan has implemented a storm water program in several phases, extending to additional users in accordance with new federal requirements. Defendant issued the first phase II NPDES permits for small municipal systems in 2002 and 2003. When those permits expired, defendant issued new general watershed and general jurisdictional permits in 2008. Plaintiffs, along with other parties, filed administrative challenges to those permits. In this action for declaratory relief, plaintiffs sought to enjoin those contested case proceedings pending resolution of their statutory and constitutional challenges to the permits in circuit court. The circuit court in this case granted the injunction, finding there would be no harm to the public interest if the contested case proceedings were stayed, there was a possibility that plaintiffs would prevail in their constitutional challenge, and irreparable harm would be caused by the expense of contested case proceedings that may not be necessary.

A party seeking injunctive relief has the burden of establishing that a preliminary injunction should be issued. MCR 3.310(A)(4). In determining whether to issue a preliminary injunction, a court must consider four factors: (1) harm to the public if the injunction issues; (2)

whether harm to the applicant in the absence of temporary relief outweighs the harm to the opposing party if relief is granted; (3) the likelihood that the applicant will prevail on the merits; and (4) a demonstration that the applicant will suffer irreparable harm if the relief is not granted. *Michigan Coalition of State Emp Unions v Civil Service Comm*, 465 Mich 212, 217; 634 NW2d 692 (2001); *Thermatool Corp v Borzym*, 227 Mich App 366, 376; 575 NW2d 334 (1998). This Court will review a trial court's grant or denial of injunctive relief for abuse of discretion. *Michigan Coalition*, 465 Mich at 217.

The trial court abused its discretion in granting a preliminary injunction where plaintiffs failed to establish the necessary elements. In balancing the relative harm, the court failed to take into account the public interest of all residents of the state in improved water quality. In addition, the court did not find that plaintiffs were likely to prevail on the merits. The court only found that it was "possible" that plaintiffs would prevail. This does not meet the standard required for a preliminary injunction. *Id.* Finally, plaintiffs did not present evidence showing that they would suffer irreparable harm from the continuation of the administrative proceedings. Speculative claims of potential financial harm are insufficient to establish irreparable harm. *Pontiac Fire Fighters Union Local 386 v Pontiac*, 482 Mich 1, 10-11; 753 NW2d 595 (2008). The administrative proceedings may in fact be a necessary prerequisite to a determination whether the regulations meet constitutional and statutory requirements. Prior to the completion of administrative proceedings, a court may not be able to determine the true scope of the regulations at issue.

We do not address defendant's issue concerning exhaustion of remedies because it was not raised in the application for leave to appeal. MCR 7.205(D)(4).

Reversed.

/s/ David H. Sawyer
/s/ E. Thomas Fitzgerald
/s/ Henry William Saad